



Department of the Secretary of State

Regulatory Fairness Board Public Hearing
Thursday, December 20, 2012
2:00 – 4:00 p.m.

Meeting Notes

In attendance:

Board Members:

Secretary of State Charles E. Summers, Jr. –
Chairman
Mark A. Tyler, Oakland - Vice Chairman
Patricia Kuhl
Doug Smith

Other Attendees:

Jay Martin, Small Business Advocate
Debbey French, Information Services Technician
Members of the general public

Chairman Summers opened the meeting with introductions.

Chairman Summers requested comment on the Board's November 16, 2012 public hearing minutes; hearing none, he motioned to approve; seconded by **Mr. Tyler**. Motion approved unanimously.

The Board reviewed the agenda. **Mr. Martin** reviewed the activities of the Board in 2012, stating that it is now the role of the Board to review the accumulated testimony, seek further information, and/or compose recommendations to be included in the report.

Chairman Summers suggested that the Board give **Mr. Martin** direction on what to include in the report. He suggested that the more concise the report, the greater likelihood it will be read and acted upon. **Mr. Smith** said that this the first report this Board is involved with crafting. **Chairman Summers** suggested that the best result would be to form themes. He asked whether the Board had any they wished to identify that they feel strongly about.

Mr. Tyler said he would assume that the Board's recommendations will be somewhat specific to each piece of testimony. One example is the inconsistent interpretation of the Life Safety Code between the local fire chiefs and the State Fire Marshal's Office where there should be no inconsistencies. **Mr. Martin** then referred the Board to Page 95 of the packet he provided, a document provided by **Mr. Richard McCarthy** of the State Fire Marshal's Office. **Chairman Summers** recalled that the testimony revealed that non-profit businesses are treated differently than for-profit businesses, where the threshold for non-profits is three hundred person capacity and one hundred for for-profits (regarding the sprinkler system installation mandate). He said he found it inconsistent that a nonprofit serving alcohol to 250 members is not subject to the sprinkler requirement. **Mr. Tyler** said that he is also referring to the difference in interpretation

of the Life Safety Code between the local official and the State Fire Marshal's Office. He said that the Life Safety Code does not provide a grandfather clause. Chairman Summers said this is a delicate issue as we want to ensure public safety, but asked at what expense? **Mr. Tyler** said that a \$30,000 sprinkler system would be a burden on most businesses. **Chairman Summers** suggested that the Board review the codes to determine whether they are equitably applied and make recommendations accordingly. The Board agreed.

Ms. Kuhl asked whether an economic impact study of regulatory compliance has ever been conducted for the marine industry. Licensing issues, submerged lands leases, and such issues accumulate costs, she said. **Mr. Martin** referred the question to two attendees from the Department of Economic and Community Development, **Mr. Brian Mulligan**, Account Executive and **Mr. Doug Ray**, Legislative Liaison. They said they are unaware of any. Attendee **Mr. Bobby Reynolds**, Special Assistant with Senator Susan Collins' Office, said that there may be studies specific to the boatbuilding industry led by trade associations. **Ms. Kuhl** concurred that there are pieces of things studied, but asked whether these pieces have ever been assembled. The attendees suggested that they have not. She suggested that businesses need such information for viability. **Chairman Summers** said he is aware of national studies indicating regulatory compliance costs in the several billions of dollars, but it is difficult to quantify individually for industries. He listed the multiple licenses required of convenience stores. **Mr. Tyler** said that the fee levels often remain the same regardless of size.

Mr. Smith said that **Mr. Patrick Strauch** testified that certain regulations have been oversimplified, creating unnecessary costs. He understands that the Bureau of Forestry is now moving towards an outcome-based system. Many small foresters would concur that compliance costs are difficult, he said. He suggested that perhaps the Board could focus on natural resource areas, to establish fees by business size. Some small start-up businesses find it difficult to cope once hiring their first employee, he said. He suggested the Board break this issue down to small specific areas, coordinating with the Department of Conservation, the Department of Environmental Protection, and others to determine costs. **Mr. Martin** said that **Mr. Strauch** offered to poll his membership, and he will send along any particular questions the Board would like to ask of his membership.

Chairman Summers suggested that the Board's next meeting be held approximately a week or so prior to submission. At this time, he said, the Board can address some of the top issues in this meeting. He suggested that the report categorize subsets of issues and work from there. **Mr. Smith** concurred, saying this is a difficult area, as it expands annually every time the Legislature meets. The Board can receive testimony, he said, and act where it can to address the overriding themes, bringing forces together to address the public's issues, determine what the costs involved should be, and the reasonable expectation from those expected to pay these costs. The Board can help determine what is essential and what costs can be expected to be borne, he said. **Chairman Summers** said that the time is right in light of the state's economic climate to determine the appropriate share of the burden businesses should be expected to shoulder. This report could be dismissed or could chart a direction forward, he said. **Mr. Smith** said that regulatory costs are clearly slowing growth in the state. The Board needs to fundamentally address this issue, he said, calling upon the testimony it has compiled so far. The Board has yet to hear anyone say they would like to pay more and worker longer hours to comply with state regulations, he said.

Mr. Tyler offered a recommendation regarding regulators showing up on site demanding certain information without an appointment. He said that this means the business owner must take time away from running the business. When regulators show up unannounced, their attitude seems to be one where they look to catch business owners/operators doing something wrong, he said, when their job is to make sure they are doing things correctly. He said this seems reasonable and would save businesses money. **Ms. Kuhl** said that business operators scurry to ensure their compliance prior to such meetings, which is the desired effect. **Chairman Summers** suggested that the Board be prepared to articulate this to the Legislature. **Mr. Tyler** said that the Legislature passes hundreds of bills into law every session, and it can be difficult for businesses to keep up with compliance requirements. He said it should be the regulators job to inform businesses of requirements, working together with businesses.

Ms. Kuhl asked **Mr. Martin** whether he would like to see a poll taken of the marine industry, and he said that he is willing to follow the direction of the Board. **Chairman Summers** said that a poll could be helpful but that it will likely result in diverse opinions. **Chairman Summers** asked **Mr. Martin** for certain categories to consider. **Mr. Martin** said that common denominator issues include the State Fire Marshalls Office regarding state versus local control. The issue regarding the one hundred person capacity sprinkler requirement is a major substantive rule for the Legislature to consider, he said. Another common denominator issue, he said, involves the submerged lands lease program that establishes leases of up to \$1,200 and these rates are now increasing up to \$14,000 next year for one business owner who testified. The rationale behind the program, he said, is that the people of Maine should benefit when a private enterprise assumes control over a footprint of waters below the low tide mark. He said the program director told him the \$600,000 funds captured from leases annually pay for \$250,000 in regulatory control, with the remaining amount funding grants for municipality water treatment and the Department of Marine Resources' shellfish safety program. The marine industry, he said, contends that such facilities enhance rather than deprive access to Maine's waters, so considers this program an unnecessary burden.

Chairman Summers said that Maine's regulatory system is a patchwork that is expensive and confusing, and that the Board wants to ensure they are applied evenly and fairly. The Board is seeking three to five categories with specific suggestions. The more the Board puts into this report, he said, the more confusing becomes and the less likely anything will come out of it. **Mr. Smith** said that he is seeking for the Board to determine the larger themes. **Mr. Tyler** said we could offer specifics regarding training people regarding the Life Safety Code. **Mr. Smith** said that this would address an area of inconsistencies between local and state government. **Chairman Summers** said that the Board could recommend training for all parties involved with regulatory compliance. **Ms. Kuhl** suggested that an online resource could be created to help prospective and current business owners to understand regulatory compliance requirements.

Mr. Martin said that one common denominator issue involves shellfish safety testing. His research indicates that there was no consensus that the new testing regimen was an undue burden on shellfish distributors. Another common denominator issue involves water quality equipment installation, testing, and maintenance, he said. The Water Quality Association and three Maine dealers/installers are seeking a tiered licensing system similar to other states where technicians are licensed based upon their levels of training, he said. **Mr. Tyler** asked whether the

Department of Health and Human Services is the regulatory agency involved and Mr. Martin said “yes”.

Chairman Summers asked **Mr. Martin** to review the testimony to determine the four or five categories that should be identified in the report. **Mr. Smith** said that there is occasional antagonism between regulators and business operators. **Chairman Summers** said that **Mr. Tyler** had offered the recommendation that regulators be required to make appointments with business owners/operators for meetings at their places of business. This will lead to improved compliance, he said, adding that each state agency should undergo twice-annual state regulatory training conference to stay current with changes in the law. **Mr. Tyler** suggested that this could be accomplished electronically to minimize time and cost and increase participation. **Chairman Summers** offered the example of the Secretary of State’s Bureau of Corporations, Elections, and Commissions training of town and city clerks prior to elections. **Mr. Smith** said that many trade associations do a good job of helping their members stay current with new laws and requirements. **Chairman Summers** said that the Board is not recommending the elimination of any particular regulations, but for state regulators to make everyone aware of them. **Mr. Smith** concurred that the report should include four or five themes and the two recommendations. **Chairman Summers** said that the regulators and town and city officials be trained at the same time. **Mr. Smith** said it would be helpful to the private sector to stay current with regulatory compliance changes quickly and inexpensively. **Chairman Summers** said that State Regulator A and Local Code Enforcement Officer B and Private Sector Member C can learn at the same time and in the same format the compliance requirements.

Mr. Tyler said that this is the crux of “regulatory fairness”. **Chairman Summers** said that this will lead to a brief but very salient report. The report’s message will be: “Keep the regulations as they exist but administer them knowledgeably and evenly.”

Chairman Summers asked for any questions and comments. Attendee **Whit Richardson**, Business Editor from the Bangor Daily News, asked for clarification on the recommendations. **Chairman Summers** said the Board would recommend that the training be required. He emphasized that this is a draft recommendation and that the Board will meet one more time to review and perhaps revise these recommendations. **Mr. Tyler** said that the issue of unawareness of new compliance requirements is a real one. **Chairman Summers** concurred, saying that often, business owners do not know they may be out of compliance until the regulators show up and find them in violation.

Chairman Summers requested further comment. Hearing none, he wished the assembly a Merry Christmas and Happy New Year. He thanked the Board for its efforts and wished the Board every success in working with the next Secretary of State, **Matt Dunlap**.

Motion by Secretary Summers to adjourn.

Seconded by Mr. Smith.

Voted: unanimous.

NEXT MEETING: To be determined.

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